IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 401 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANGILAL MANMAL JAIN

Versus

STATE OF GUJARAT

Appearance:

MR UTPAL M PANCHAL for Petitioner

Mr S P Dave APP for Respondent No. 1

MR MUKESH R SHAH for Respondent No. 2, 3, 4, 5

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/04/2001

ORAL JUDGEMENT

The petitioner above named, has preferred this Criminal Revision Application under section 397 of the Criminal Procedure Code, 1973 (for short, 'the Code'),

challenging the judgment and order dated 1.9.2000 recorded by the learned Sessions Judge, Surat in Criminal Revision Application No.11/2000 under which the learned Judge allowed the application of the applicant of that revision and they were permitted to produce the documents as additional evidence in the said Criminal Revision and further directed that the said documents be taken on record as prayed for. The facts leading to the present revision may be briefly stated as follows. There was a dispute with respect to immovable property situated at Surat and, therefore, on behalf of the State of Gujarat, Police Inspector of Kapodara police station, filed application under section 145 of the Code against Kalubhai Merubhai Mer and Mangilal Manmal Jain. The learned Executive Magistrate heard them and decided the matter on 5.1.2000 holding that Mangilal, who is the present petitioner, in the present revision, was in possession of the property mentioned in the said order and which was the subject matter between the parties of the said matter before the learned Executive Magistrate.

2. Feeling aggrieved by the said judgment and order of the learned Executive Magistrate, a revision has been filed by Kalubhai Mer being Cr. Revision No.12/2000 before the Sessions Court at Surat. Same way, another revision was also filed before the Sessions Court at Surat by the present respondents no.2,3,4, and 5 being impugned Revision Application. IN the said Revision Application, these contesting respondents No.2 to 5 submitted application for allowing them to produce additional evidence. The Sessions Judge allowed the said application and permitted production of additional evidence. Feeling aggrieved by the said judgment and order of the learned Sessions Judge, the petitioner has preferred this revision before this Court under section 397 of the Code. It has been mainly contended here that the revisional court cannot exercise powers of appeal and cannot permit additional evidence. That the permission granted by the Sessions Court for production of evidence is likely to adversely affect the interest of the present petitioner. That therefore, the impugned order permitting production of additional evidence is illegal. It is, therefore, prayed that the present revision be allowed and the judgment and order of the learned Sessions Judge be quashed and set aside.

3. On receipt of the revision, notice was issued and in response to the service of notice, Mr S P Dave, learned APP appears for the State-respondent no.1 and opposes the present revision. Mr M R Shah, learned Advocate appearing for contesting respondents no.2 to 5

also opposes the present revision. I have heard the learned Advocates for the petitioner and learned APP for the State and learned Advocate for respondents no.2 to 5, who have taken me through the judgment and other relevant papers of this revision.

4. Learned Advocate for the revisional petitioner has argued at length that the learned Sessions Judge had no power or jurisdiction to permit production of additional evidence in the revision since there is no such provision in the Code permitting additional evidence in a revision. For the said purpose, he had relied upon a decision in the case of K P Chavda v. N K Chavda, reported in 1992 (2) GLR 1520 wherein it has been laid down that the revisional powers are not appellate powers.

5. There cannot be any dispute about the said legal provision. A court of revision cannot exercise power which has been conferred on a court of appeal unless such powers have been conferred on a court of revision as a court of Revision. However, at the same time, if the Court of Revision is conferred with some powers of a court of appeal then there is no difficulty for that court in exercising the power of the court of appeal.

6. The learned Advocate for the petitioner has taken me through the provisions of section 397 of the Code. So far as this section is concerned, it gives powers to the High Court or to the Sessions Judge to act in accordance with the provisions made in section 397 of the Code. This would naturally not elaborately tell us to what are the powers, functions and jurisdiction of a Court of Revision.

7. He has also taken me through other provisions of section 401 of the Code. Now it would be worthwhile to refer to the provisions contained in sub-section (1) of section 401 of the Code which may be reproduced for ready reference as under:

> "(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the HIgh Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392."

8. The aforesaid provision makes it clear that a Court or revision, be a Court of Sessions or High court, may exercise any of the powers conferred on a Court of Appeal by section 399 of the Code. We can then refer to the provisions made in section 399 of the code. Sub-section (1) of Section 399 of the Code is reproduced for ready reference as follows:

> "(1) In the case of any proceeding, the Sessions Judge may exercise all or any of the powers which may be exercised by the High court under sub-section (1) of Section 401."

A bare perusal of sub-section (1) of Section 399 makes it clear that the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of section 401. This would mean that the revisional powers of Sessions Judge and the revisional powers of the High Court are the same. In other words, both the Courts have concurrent jurisdiction and there is no limitation placed by the Court over the exercise of the powers in revision by a Sessions Court. In other words, powers of the High Court to hear and entertain the revision is not different from the powers of a Sessions Judge hearing the revision.

8. We can turn to the provisions made in Section 391 of the Code. Sub-section (1) of section 391 may be reproduced for ready reference as under:

> "(1) In dealing with any appeal under this Chapter, the Appellate Court if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate."

On a bare perusal of sub-section (1) of section 391 makes it clear that an Appellate Court is empowered to permit additional evidence if it is found necessary. This would mean that a Court of Appeal has power and jurisdiction to permit production of additional evidence under section 397(1) of the Code. As said above, sub-section (1) of section 401 empowers a Court of revision to exercise power of section 391 of the Code. This would mean that a Court of Revision exercising powers and jurisdiction under sections 397 and 399 read with section 401(1) of the Code has power to pass appropriate orders as could be done by a Court of Appeal in exercise of the powers

conferred by section 397(1) of the Code. This necessarily mean that a Court of Revision has power to permit production of additional evidence in a revision.

9. Therefore, the aforesaid decision of 1992 (2) GLR (supra) will not apply to the facts of the case. The two positive provisions made in the law themselves permit production of additional evidence in criminal revision by reading section 401(1) read with sections 397,, 399 and 391 of the Code. Therefore, if all the sections are read together it goes without saying that a Court of Revision is empowered to permit production of additional evidence in revision. If a particular power or jurisdiction has not been conferred on a Court hearing the Criminal Revision, then such a Court cannot exercise power of appeal but when a revisional court is conferred with a power of a Court of Appeal, then such a power of a Court of Appeal can certainly be exercised by a Court of Revision. Therefore, the aforesaid decision will again not apply to the facts of the present case and on application of the aforesaid provisions of the Code.

10. It has also been argued by referring a decision in the case of Latilunnisa v. Saiyed Ashrafali Ahmedali, reported in 1986 GLH 254 that reappreciation of evidence would not be permissible in a revision. Here we find that the learned Sessions Judge was not required to reappreciate evidence already on record. Here the facts are little different. The case before the Executive Magistrate was conducted by joining Kalubhai Mer and the present petitioner as opponents. The said matter was decided by the Executive Magistrate against those two opponents only. It appears that the interest of the present respondents No.2 to 5 was adversely affected on account of the aforesaid decision. Therefore, these respondents no.2 to 5 have preferred the aforesaid Revision before the Sessions Judge at Surat being Revision Application No.11/2000. Therefore, on the one hand these respondents were not party before the learned Executive Magistrate, on the other hand, the documents which have been enlisted at page 87 were not the documents produced before the learned Executive Magistrate. Therefore, the learned Executive Magistrate was not in a position to consider them and therefore, it cannot be said that the learned Sessions Judge was required to reappreciate the evidence already appreciated by the Executive Magistrate. When these documents enumerated at page 87 were not on record before the learned Executive Magistrate, then the Executive Magistrate had no occasion to appreciate the same. Therefore, when the learned Sessions Judge was required

to consider the documents enlisted at page 87, it could not be said that the learned Sessions Judge was reappreciating the evidence already appreciated by the learned Executive Magistrate.

11. As said above, contesting respondents no. 2 to 5 were not parties before the learned executive Magistrate and, therefore, the documents in question were the documents pertaining to them and, therefore, those documents could not be produced by Kalubhai Mer before the Executive Magistrate and, therefore, there was nothing wrong if the contesting respondents no.2 to 5 were permitted to produce those additional materials before the learned Sessions Judge.

12. It has been contended by the learned Advocate of the present petitioner that Kalubhai Mer was the Power of Attorney Holder of contesting respondents no.2 to 5. At the same time, Kalubhai Mer was joined as a party to the said proceedings under section 145 of the Code by the Police Inspector of Kapodara Police Station in his personal capacity. There is nothing on record to show that he was the holder of power of attorney of respondents no.2 to 5. Therefore, treating himself to be a party in individual capacity, he may have contested the last litigation but when the litigation ended, it had adverse effect on the right, title and interest of respondents no.2 to 5 and hence they have preferred the aforesaid Revision and in that revision the aforesaid documents pertinent to them were permitted to be produced as additional evidence. Therefore, even if Kalubhai was the holder of Power of Attorney of contesting respondents no.2 to 5, it cannot be said that Kalubhai ought to have produced those documents before the Executive Magistrate Andy therefore, the additional evidence could not have been permitted to be produced at the request of respondents no. 2 to 5. It has also been argued on behalf of the petitioner that the affidavits of these contesting respondents were filed by Kalubhai Mer in the proceedings before the Executive Magistrate, and therefore, these respondents were aware of the proceedings pending before the Executive Magistrate. That therefore, they ought to have filed those documents before the learned Executive Magistrate. There, as said above, they were not the parties to the said proceeding. Therefore, if they did not produce those documents pertinent to their property before the learned Magistrate, then it would not be wrong or illegal to permit them to produce additional evidence in their revision in which they are parties.

13. Next contention raised by the learned Advocate for the petitioner is that the revision filed by the contesting respondents no. 2 to 5 would not be maintainable since Kalubhai Mer was the holder of the Power of Attorney of these contesting respondents. The maintainability of the revision before the learned Sessions Judge is not required to be considered here because that point could be agitated before the learned Sessions Judge herself and this has not been done there. Therefore, it cannot be permitted to be done here for the first time. At the same time, the petitioner would naturally be at liberty to put up before the learned Sessions Judge that the Revision filed by contesting respondents no. 2 to 4 herein was not maintainable and in above view of the matter, Kalubhai Mer represented the interest and estate of contesting respondents no.2 to 5 before the learned Executive Magistrate and the maintainability of the revision before the learned Sessions Judge may be disputed before the learned Sessions Judge which has not been dealt with and decided by the learned Sessions Judge and, therefore, there is no decision on that aspect of the case recorded by the learned Sessions Judge. Therefore, it is not possible for this Court to appreciate the said question in this revision. Any way, I am of the view that the learned Sessions Judge has not committed any illegality in passing the order permitting contesting respondents no.2 to 5 to produce additional evidence in respect of their property. Since the judgment and order of the learned Sessions Judge are not found to be illegal, it is not possible for this court to interfere with the said order of the learned Sessions Judge. Meaning thereby, there is no merit in this revision application and the same is required to be dismissed at the admission stage.

14. In the result, in view of the foregoing reasons, this Revision application is dismissed. Notice discharged. Interim relief stands vacated.

At this stage, learned advocate for the petitioner submits that the interim relief may be continued for a further period of six weeks in order to enable the petitioner to approach the higher forum. Even if the documents are permitted to be produced before the learned Sessions Judge, the alleged right of the present petitioner is not likely to be adversely affected. In that view of the matter, I am of the view that it is not necessary to continue the interim relief any further. Therefore, the said prayer is rejected.

23.4.2001 [D P Buch, J.]
msp